CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 123

CARL B. WILLIAMS, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 11, 1945.

CERTIORARI GRANTED OCTOBER 8, 1945.

No. 10825

United States
Circuit Court of Appeals
For the Ninth Circuit.

CARL B. WILLIAMS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States for the District of Arizona

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Attorney for Appellee. [2*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States
for the District of Arizona

C-6759 Phoenix

Violation: 18 U.S.C. 548 (Rape)

United States of America
District of Arizona—ss.

INDICTMENT

In the District Court of the United States in and for the District of Arizona, at the October term, thereof A. D. 1943.

The Grand Jurors of the United States, impaneled, sworn, and charged at the term aforesaid, of the Court aforesaid, on their oath present, that Carl H. Williams, alias Reverend Carl A. Williams, on or about the 10th day of December, A. D. 1943, and within the said District of Arizona, upon and within the limits of the Colorado River Indian Reservation, did then and there wilfully, unlawfully and feloniously ravish and carnally know Geraldine Rose Ameelyenah, she, the said Geraldine Rose Ameelyenah, being then and there a female person and an Indian and under the age of eighteen years, and not being then and there the wife of the said Carl A. Williams, alias Reverand Carl A. Williams; contrary to the form of the statute in such case

made and provided, and against the peace and dignity of the United States of America.

F. E. FLYNN
United States Attorney for
the District of Arizona.

[Endorsed]: Indictment. A True Bill. J. G. O'Malley, Foreman of the Grand Jury.

[Endorsed]: Filed Mar. 23, 1944. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By: Gertrude I. Bitting, Deputy Clerk. [4]

In the United States District Court
for the District of Arizona

April 1944 Term. Monday, April 3, 1944
At Phoenix
(Phoenix Division)

Honorable Dave W. Ling, United States District Judge, Presiding

C-6759

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CARL H. WILLIAMS,
Defendant.

The defendant is present in person with his counsel John H. Corbin, Esquire, and is now duly arraigned. The defendant states that his true name

is Carl B. Williams, and It Is Ordered that further proceedings herein be conducted in the true name of the defendant. The defendant waives the reading of the indictment and a copy thereof is handed to him. The defendant's plea is not guilty, which plea is now duly entered. Thereupon, It is ordered that this case be and it is set for trial May 25, 1944. Subsequently, it is ordered that the order setting this case for trial be and it is vacated and it is ordered that this case be and it is set for trial Friday, May 26, 1944, at ten o'clock a.m. [5]

United States District Court,
District of Arizona

C-6759-Phoenix

UNITED STATES OF AMERICA,

Plaintiff,

Against

CARL B. WILLIAMS,

Defendant.

VERDICT

We, the Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find the defendant, Carl B. Williams, Guilty in the manner and form as charged in the Indictment.

W. H. SCHEUMACK
Foreman.

[Endorsed]: Filed Jun. 22, 1944. [6]

In the District Court of the United States,
For the District of Arizona

C-6759 Phx

Violation: 18 U.S.C. 548 (Rape)

United States of America
District of Arizona—ss.

Comes now the defendant, in the above-entitled and numbered cause, by his attorneys, and respectfully moves the court for an order setting aside the verdict and quashing the indictment upon the ground and for the reason:

That a conviction on an indictment which fails to charge a crime, is wholly void, and that any judgment which the court might render upon said verdict, or any sentence which the court might impose upon the defendant as a result thereof, would be void and unenforceable:

Tennessee vs. Davis, 100 U.S., 257, 25 L. ed., 648;

United States vs. Hudson, 7 Cranch 32, 3 L. ed. 259;

United States vs. Rothstein (C.C.A.) 187 Federal, 269;

Joseph Mossew vs. United States, 266 Fed., 18, 11 A.L.R. 1261.

Respectfully submitted,
JOHN W. CORDIN
J. B. SUMTER
Attorneys for Defendant.

Counsel respectfully requests that the foregoing motion be heard orally.

[Endorsed]: Copy Received this 24th day of June, 1944. By F. E. Flynn, United States Attorney.

[Endorsed]: Filed Jun. 24, 1944. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By: Catherine A. Dougherty, Deputy Clerk. [7]

In the United States District Court
for the District of Arizona

April 1944 Term. Wednesday, June 21, 1944

At Phoenix
(Phoenix Division)

Honorable Dave W. Ling, United States District Judge, Presiding

[Title of Cause.]

C-6759

This case comes on regularly for trial this day. John R. Franks, Esquire, and E. R. Thurman, Esquire, Assistant United States Attorneys are present on behalf of the Government. The defendant is present in person with his counsel John H. Corbin, Esquire, and J. B. Sumter, Esquire. On motion of John H. Corbin, Esquire, It is ordered that J. B. Sumter be entered of record as associate counsel for the defendant. Both sides announce ready

for trial. A lawful jury of twelve men is now duly empaneled and sworn to try this case. E. R. Thurman, Esquire, Assistant United States Attorney, now reads aloud the Indictment to the Jury and thereafter said counsel for the Government states to the jury the defendant's plea of not guilty. The said Assistant United States Attorney now states the Government's case to the Jury. Thereupon, it is ordered that all jurors not empaneled in the trial of this case and in attendance on this court be excused until further order.

Government's Case:

C. H. Gessler is now sworn and examined on behalf of the Government.

Geraldine Rose Ameelyenah is now sworn and examined on behalf of the Government.

Robert L. Currie is now sworn and examined on behalf of the Government.

Sheraton Sharpe is now sworn and examined on behalf of the Government. [8]

The Government Rests.

Thereupon, at the hour of 11:35 o'clock a.m., It is ordered that the jury herein be and it is excused to 2:00 o'clock p.m. this date. The jury is admonished and excluded from the courtroom.

Whereupon, the Defendant now moves for a directed verdict of acquittal for the reason that the evidence shows no offense committed against the Government in that the evidence shows that the complaining witness is over the age of sixteen years.

Thereupon, it is ordered that the further trial of

this case be continued to the hour of two o'clock p.m. this date.

Subsequently, at the hour of two o'clock p.m. the jury and all members thereof, the defendant and counsel for respective parties being present pursuant to recess, further proceedings of trial are had as follows:

It Is Ordered that the defendant's motion for a directed verdict of acquittal be and it is denied.

Defendant's Case.

Mrs. Carl Williams is now sworn and examined on behalf of the defendant.

Carl B. Williams is now sworn and examined in his own behalf.

Government's Exhibit one, letter, is now admitted in evidence.

Lucille Torr is now sworn and examined on behalf of the defendant.

Geraldine Rose Ameelyenah is now recalled and further examined on behalf of the defendant.

The Defendant Rests.

Both Sides Rest.

All the evidence being in, the case is now argued by respective counsel to the Jury.

And thereupon, at the hour of 3:45 o'clock p.m., It is ordered that the further trial of this case be continued to the hour of ten o'clock a.m. June 22, 1944, to which time the Jury [9] being first duly admonished by the Court, the defendant and counsel are excused.

[Title of Court and Cause.]

Thursday, June 22, 1944

Honorable Dave W. Ling, United States District Judge, Presiding

The Jury, and all members thereof, the defendant and all counsel are present pursuant to recess and further proceedings of trial are had as follows:

The jury is duly admonished by the Court and excluded from the Courtroom. The defendant now moves the Court for an order quashing the Indictment herein upon the grounds that the Court lacks jurisdiction of the offense charged in the indictment and that the indictment does not state facts sufficient to constitute an offense. It is ordered that said motion be and it is denied. The jury, and all members thereof, return into Court, and the Court duly instructs the jury and said jury retire at the hour of 10:20 o'clock a.m. to consider of their verdict.

Subsequently, the defendant and all counsel being present, it is ordered that Government's Exhibit one, letter, be delivered to the Jury.

Thereafter, the defendant and all counsel being present, the jury return in a body into open Court at the hour of 11:45 o'clock a.m., and all members thereof being present, are asked if they have agreed upon a verdict. Whereupon, the Foreman reports that they have agreed and presents the following verdict, to-wit:

C-6759-Phoenix

UNITED STATES OF AMERICA,

Plaintiff,

Against

CARL B. WILLIAMS,

Defendant.

VERDICT

We, the Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find the defendant, Carl B. Williams, Guilty in the manner and form as charged in the Indictment.

W. H. SCHEUMACK,
Foreman [19]

The verdict is read as recorded and on motion of John H. Corbin, Esquire, counsel for the defendant; it is ordered that said jury be polled. Thereupon, each juror is called by name and asked if this is his verdict and each of said jurors answers in the affirmative. Whereupon, the Jury is discharged from the further consideration of this case and until further order of the Court and the defendant is remanded to the custody of the United States Marshal to await sentence.

It is Ordered that this case be and it is set for sentence June 26, 1944, at the hour of ten o'clock a.m.

Defendant now moves for an order to permit defendant to continue on his present bond until sentence is imposed, and it is ordered that said motion be and it is denied.

[Title of Court and Cause.]

Honorable Dave W. Ling, United States District Judge, Presiding.

Monday, June 26, 1944.

This case comes on regularly for judgment and sentence this date. The defendant is present in person with his counsel J. B. Sumter, Esquire. John R. Franks, Assistant United States Attorney, and E. R. Thurman, Assistant United States Attorney, are present on behalf of the United States. Motion of the defendant to set aside the verdict and quash the indictment is now duly argued by respective counsel to the Court, submitted and by the Court taken under advisement. Thereupon, it is ordered that this case be and it is continued for sentence to Tuesday, June 27, 1944, at the hour of ten o'clock a. m.

[Title of Court and Cause.]

Honorable Dave W. Ling, United States District Judge, Presiding.

Tuesday, June 27, 1944.

This case comes on regularly for judgment and sentence this date. The defendant is present in person with his counsel John H. Corbin, Esquire. John R. Franks, Esquire, Assistant United States Attorney is present on behalf of the Government.

[11]

Thereupon, it is ordered that the defendant's motion to set aside verdict and quash indictment be and it is denied.

Whereupon, no legal cause appearing why judgment should not now be imposed, the Court renders judgment as follows: [12]

In the United States District Court
for the District of Arizona

No. C-6759-Phoenix

UNITED STATES OF AMERICA

Plaintiff,

vs.

CARL B. WILLIAMS,

Defendant.

JUDGMENT

Due proceedings having been had on the Indictment filed herein presented against the defendant above named charging a violation of Title 18, United States Code, Section 548.

It Is Ordered, Adjudged and Decreed that said defendant is guilty of said crime and in punishment thereof that said defendant be committed to the custody of the Attorney General of the United States or his duly authorized representative for imprisonment in such place of confinement as the said Attorney General shall designate for a term of five (5) years.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer

and that the same shall serve as the commitment herein.

Dated at Phoenix, Arizona, June 27, 1944.

DAVE W. LING,
Judge.

[Endorsed]: Filed June 27, 1944. [13]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of appellant is: Carl B. Williams, Route 1, Box 669 A, Glendale, Arizona.

Names and addresses of attorneys for appellant are: John W. Corbin, 315 Phoenix National Bank Building, J. B. Sumter, Luhrs Tower, Phoenix, Arizona.

The offense alleged in the indictment is the violation of:

Sec. 289, 35 Stat. 1145, Title 18, U. S. C. A. 468, Sup. and Sec. 43-4901, Par. 2, Arizona Code Ann. 1939.

The sentence imposed by the Court is "the defendant is guilty of said crime and in punishment thereof that said defendant be committed to the custody of the Attorney General of the United States, or his duly authorized representative, for imprisonment in such place of confinement as the said Attorney General shall designate for a period of five (5) years."

I, Carl B. Williams, the above named appellant, appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the conviction, judgment and sentence above set forth and referred to, on the grounds set forth below.

CARL B. WILLIAMS,
Defendant.
JOHN W. CORBIN,
J. B. SUMTER,
Attorneys for Defendant. [14]

---

1. That the Court erred in denying defendant's motion for a directed verdict of not guilty made at the close of the Government's case upon the grounds and for the reason:

(a) That the uncontradicted evidence conclusively shows that the prosecuting witness was over the age of sixteen (16) years, and, therefore, capable of consenting to an act of sexual intercourse with a non-Indian upon lands within the exclusive jurisdiction of the United States.

(b) That Sec. 289, 35 Stat. 1145, Title 18, U. S. C. A., 468, Sup. and Sec. 43-4901, Par. 2. Arizona Code Ann. 1939, does not apply where an act of sexual intercourse has been performed between a non-Indian and a female Indian over the age of sixteen (16) years and under the age of eighteen (18) years upon Indian reservations because Sec. 279, 35 Stat. 1143, Title 18, U. S. C. A. Sec. 458, Sup. is a limitation upon Sec. 289, 35 Stat. 1145, Title

18, U. S. C. A. 468, Sup. and Sec. 43-4901, Par. 2. Arizona Code Ann. 1939.

2. The Court erred in refusing to grant the defendant's motion to set aside the verdict and quash the indictment upon the grounds and for the reason:

(a) That there is no Federal Statute denouncing as a crime an act of sexual intercourse committed upon an Indian Reservation by a non-Indian upon the person of a female Indian over the age of sixteen (16) years and under the age of eighteen (18) years, and that, therefore, said indictment did not state a public offense and that the conviction, judgment and sentence are void.

JOHN W. CORBIN
J. B. SUMTER
Attorneys for Appellant.

Received 2 copies of the within and foregoing Notice of Appeal this 29th day of June, 1944.

F. E. FLYNN
United States Attorney
By: E. R. THURMAN
Assistant United States Attorney

[Endorsed]: Filed Jun. 29, 1944. [15]

[Title of District Court and Cause.]

C-6759

Violation: 18 U.S.C. 548 (Rape)

BOND

Know All Men By These Presents:

That we, Carl B. Williams, as principal, and United States Fidelity and Guaranty Company, as surety, are held firmly and bound unto the United States of America in the full and just sum of Two Thousand Seven Hundred Fifty ($2.750.00) Dollars to be paid to the said United States of America, to which payment well and truly to be made, we bind ourselves, our lawful successors and assigns, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seal and dated this 28th day of June, in the year of our Lord One Thousand Nine Hundred and Forty Four.

Whereas, lately in the April term A. D. 1944 of the District Court of the United States for the District of Arizona in a suit pending in said Court between the United States of America as plaintiff, and Carl B. Williams as defendant, a judgment and sentence was rendered against the said Carl B. Williams, and the said Carl B. Williams has taken an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment and sentence in the aforesaid suit, and notice of the said appeal, in duplicate, having been filed with the Clerk of the District Court of the United States for the District of Arizona and a copy of such appeal having been duly served upon the

United States Attorney for the District of Arizona, in the manner and within the time required by law and the rules of Court in such cases made and provided.

Now, the condition of the above obligation is such that if the said Carl B. Williams shall appear in the United States Circuit Court of Appeals for the Ninth Circuit in San Francisco, State of California, on such day or days as may be appointed for the hearing of said cause in said court, and upon such day or days as may be appointed by said Court until finally discharged therefrom, and shall abide by and obey all orders made by the said United States Circuit Court of Appeals for the Ninth Circuit in said cause, and shall surrender himself in execution of the judgment and sentence of said District Court of the United States for the District of Arizona if said judgment against him shall be affirmed by the said United States Circuit Court of Appeals for the Ninth Circuit, then above obligation shall be void, otherwise to remain in full force and effect.

[16]

Now, therefore, and as a further condition of this bond, that if the said Carl B. Williams, appellant above named, shall prosecute his appeal to the effect and shall pay all the taxable costs on appeal if he fails to make his appeal good, then above obligation shall be void, otherwise to remain in full force and effect.

And the surety in this obligation hereby covenants and agrees that in case of a breach of any condition of this bond, the United States District Court for

the District of Arizona may upon notice to said surety of not less than ten (10) days proceed summarily in this cause to ascertain the amount of taxable costs in the Circuit Court of Appeals which said surety is bound to pay on account of such breach, and render judgment therefor against said surety and to order execution therefor.

In witness whereof the undersigned have executed this bond this 28th day of June, 1944.

CARL B. WILLIAMS,
Principal.

[Seal] UNITED STATES FIDELITY AND GUARANTY COMPANY,

By O. D. BRICK,
Attorney in Fact,

HILKA DE FRANCE,

O. D. BRICK,
Surety.

State of California,
County of Los Angeles—ss

On this 28th day of June, in the year 1944, before me, Agnes L. Whyte, a Notary Public in and for said County and State, personally appeared O. D. Brick, known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-fact of the United States Fidelity and Guaranty Company, and acknowledged to me that he subscribed the name of the United States Fidelity and Guaranty Company thereto as principal, and his

own name as Attorney-in-fact.

[Seal] AGNES L. WHYTE,
Notary Public in and for said
County and State.

My Commission Expires Feb. 26, 1945.

Approved this 28th day of June, 1944.

DAVE W. LING,
Judge.

[Endorsed]: Filed June 29, 1944. [17]

[Title of Court and Cause.]

Honorable Albert M. Sames, United States District Judge, Presiding.

Wednesday, July 12, 1944.

John R. Franks, Esquire, Assistant United States Attorney is present on behalf of the Government. John Francis Connor, Esquire, is present on behalf of the defendant and now presents motion of John W. Corbin to withdraw as counsel for the Defendant. Thereupon, it is ordered that said motion be and it is granted and the following order entered:

ORDER

Upon Motion of John W. Corbin, chief counsel of record for the defendant herein, It Is Hereby Ordered, that the said John W. Corbin and the said J. B. Sumter be permitted to withdraw as

attorneys of record for the defendant in the above entitled action.

ALBERT M. SAMES,
Judge.

Thereupon, John Francis Connor, Esquire, now presents motion to substitute Messrs. Dougherty, Chandler and Connor as attorneys for the defendant herein, and it is ordered that said motion be and it is granted and that Messrs. Dougherty, Chandler and Connor be entered as counsel for the defendant herein. [18]

[Title of District Court and Cause.]

MOTION FOR EXTENSION OF TIME TO MAKE RECORD ON APPEAL

Comes now, John F. Connor, of counsel for the defendant-appellant above named, and respectfully moves the Court for an extension of time in which to make his Record on Appeal and submit Assignments of Error; said Motion being supported by the following facts:

That after Notice of Appeal was filed in this action, circumstances warranted the employment of substitute counsel by defendant-appellant; that upon Order of this Court, substitution of counsel of record was duly made;

That new counsel of record is not and could not have been familiar with the proceedings had during the trial of the within action and that informal review of such proceedings is necessary to be had;

that it will be necessary to rearrange affiant's schedule of work incident to his practice and trial of actions in other Courts so as to properly prepare this Appeal; that in order that time may be had to accomplish such objectives, counsel respectfully requests such extension of time.

JOHN F. CONNOR.

Subscribed and sworn to before me this 24th day of July, A. D., 1944.

[Seal] ANN STEINBERG,
Notary Public.

My Commission Expires April 9, 1948.

No Objections:

FRANK E. FLYNN,
U. S. District Attorney for Arizona.

By: JOHN R. FRANKS,
Assistant U. S. District Attorney.

[Endorsed]: Filed July 25, 1944. [19]

[Title of District Court and Cause.]

ORDER EXTENDING TIME IN WHICH TO MAKE RECORD ON APPEAL AND SUBMIT ASSIGNMENTS OF ERROR

Upon reading and filing the affidavit of John F. Connor, Esquire, filed herein this day, and due deliberation having been had, it is:

Ordered, that defendant's time to prepare his

Record on Appeal and file his Assignments of Error herein, be extended Thirty (30) days from and after this date.

Dated July 25, 1944.

ALBERT M. SAMES,

United States District Judge, in absence from the District of United States District Judge, Dave W. Ling.

[Endorsed]: Filed July 25, 1944. [20]

[Title of District Court and Cause.]

PROPOSED BILL OF EXCEPTIONS

Be It Remembered that the above entitled and numbered cause came on regularly for trial before the District Court of the United States for the District of Arizona, Phoenix Division, the Honorable Dave W. Ling presiding with a jury, commencing at the hour of 10:00 o'clock A. M. on June 21, 1944, and continuing thereafter until June 22, 1944, when the cause was submitted to the jury and the jury on said day returned their verdict into open court, finding the defendant guilty in manner and form as charged in the indictment.

At the trial of said cause, the plaintiff, United States of America, was represented by Honorable E. R. Thurman and John R. Franks, Deputy United States Attorneys for the District of Arizona; the defendant appeared in person, being represented by his attorneys, John H. Corbin and J. Bolivar

Sumter. Both sides having announced ready for trial, Louis L. Billar was sworn as shorthand reporter; and the jury having been duly summoned into the jury box and sworn to try the cause, the following proceedings were had:

The indictment in said cause was read to the jury, and defendant's plea thereto of not guilty was stated, whereupon the United States of America, plaintiff, to sustain the allegations of said indictment, called C. H. Gensler, Superintendent [21] of the Colorado Indian Reservation, as a witness on behalf of plaintiff and said witness being sworn, testified as follows:

Direct Examination

My Name is C. H. Gensler. I am the superintendent of the Colorado Indian Reservation, lying within the State and District of Arizona. I have lived on and have been associated as an official with the Colorado Indian Reservation for the past twenty-two (22) years or more. I know Geraldine Rose Ameelyenah, the prosecuting witness. I recall that she was born on the Colorado Indian Reservation, and I know that her birth occurred on said reservation on the 8th day of August, 1927. She would have been sixteen (16) years of age on August 8, 1943, and in the first week of December, 1943, she would have been over sixteen (16) years of age and under eighteen (18) years of age. I know the defendant, Carl Williams. He first appeared around Parker and on the Colorado Indian Reservation about two (2) years ago, being first

connected with the War Relocation Authority there, and later securing work as a clerk in the Valley Grocery Store. He became interested in work with the Indians and did missionary work as a Nazarene preacher.

The defendant then waived cross-examination of the witness, Gensler.

GERALDINE ROSE AMEELYENAH

was then called as a witness on behalf of plaintiff, and being duly sworn, testified as follows:

My name is Geraldine Rose Ameelyenah. I am a Mohave Indian, and I live on the Colorado Indian Reservation which is near Parker, Arizona. I know Mr. Carl Williams, the defendant here, and I know his wife who is sitting there at [22] the table to his right. I go to school at the Colorado Indian Reservation. I have lived on this reservation all my life. I am now over sixteen (16) years of age. I was sixteen (16) on the 8th day of August, 1943. I have known Mr. Williams for about a year. He was interested in Indians and Indian work, and he established a Nazarene Church on the reservation and asked my mother if I might be permitted to attend his church with other Indians. After the church was well established, we began publishing a church newspaper, and I was Mr. Williams' assistant on the newspaper. I remember on Friday, December 3, 1943, that Mr. Williams came by my

(Testimony of Geraldine Rose Ameelyenah.)

house in the evening and asked my mother to let me go to the church to do some work on the newspaper. An Indian boy, Laurentine McCormick was with him in his pickup truck. I went with Mr. Williams and then we drove down the road and got another Indian boy, Sheridan Sharp. We went to the church and did some work on the newspaper; fixed up some little articles and then later, when it was getting dark, it was time to go home. We all got in Mr. Williams' pickup truck; Mr. Williams took the boys home first and made one stop to let one boy off at his home and another stop to let the other boy off. Then Mr. Williams and I took a ride. We went down the main highway for awhile and then we drove off the main highway and down a side road about a mile and a half nearby the old Gonzales place. It was about 10 o'clock at night. We stayed there a long time and talked together. When we were there, we got into the back of the pickup truck and Mr. Williams had sexual intercourse with me. After that, he took me to my home. I am not the wife of the defendant. [23]

Cross Examination

The Gonzales place is on the Indian Reservation. We drove out there to talk. We stayed there for a long time. It was out there in the truck where Mr. Williams had intercourse with me. I know I am sixteen (16) because I have always known my birthday, and I have known for a long time that I was born in the year 1927.

SHERIDAN SHARP

was then called as a witness on behalf of plaintiff, and being duly sworn, testified as follows:

My name is Sheridan Sharp. We were at the church, as Geraldine said, and then Mr. Williams took us away, leaving Laurentine at his home and later left me off his car at my home. I last saw Geraldine riding away in the pickup with Mr. Williams.

The defendant then waived cross examination of the witness, Sheridan Sharp. Thereupon the plaintiff announced that it had submitted all its evidence and the plaintiff then rested.

Thereupon the defendant moved for a directed verdict of "not guilty"; said motion was denied by the Court, the defendant duly excepting thereto.

Thereupon the defendant entered upon the presentation of evidence in support of his plea of "not guilty."

CARL B. WILLIAMS

was then called as a witness in his own behalf, and being duly sworn, testified:

My name is Carl B. Williams. I am a married man and have one child, Brian Williams, by name, who is thirteen (13) years old. I was born March 29, 1898, at Lehi, Iowa. I have [24] held various occupations; have done machine work, and worked as a grocery man. Too, I am a minister of the Naz-

(Testimony of Carl B. Williams.)

arene Church. I lived at Parker, Arizona, since about 1942. I know Geraldine Rose Ameelyenah. I am not an Indian. I have no Indian blood. I was born of Caucasian American parentage. I have been interested in spreading the gospel among the Indians and have endeavored to understand their needs and wants. I did not have sexual intercourse with Geraldine on the Colorado Indian Reservation near Gonzales, nor at any other place. I have never had sexual intercourse with her at any place or at any time. On the date upon which I am accused of the offense, I was at my own home, busily engaged in preparing notes for a sermon which was to be given at the church on the following Sunday.

Cross Examination

I did not know Geraldine's age. I wasn't interested in her age, whether she was sixteen (16) or eighteen (18), or otherwise. I was only interested in the spiritual welfare of the Indians and had no intimate relations with her or any other Indian at any time or any place.

Thereupon the defendant put on other evidence which is not material to the issues presented on the Record on Appeal.

Upon the conclusion of his case, defendant again moved for a directed verdict upon the ground that no competent evidence had been adduced to show the commission of any crime by the defendant, and said motion being by the Court denied, the defendant thereto duly excepted.

Thereafter, the trial was recessed until 10 o'clock A. M., the following day. [25]

After recess taken, and on June 22, 1944, further proceedings were had, and defendant moved the Court for an order quashing the indictment on the grounds that the indictment did not state facts sufficient to constitute a public offense, and further that the Court lacked jurisdiction of the offense charged in the indictment. The motion was denied by Order of Court, the defendant duly excepting thereto, whereupon the jury was instructed and at the hour of 10:20 A. M., retired to consider the verdict and at 11:45 A. M. on said day, returned their verdict of "guilty".

Thereafter, and upon June 26, the defendant came on regularly for sentence, whereupon defendant by his attorneys, filed and presented his formal written motion to set aside the verdict and quash the indictment on the grounds that the indictment did not state facts sufficient to constitute a public offense, and for the further ground that the Court lacked jurisdiction of the offense charged in the indictment. Said motion being duly argued by respective counsel, the same was submitted to the Court and by it, taken under advisement, until June 27, 1944, at 10 o'clock A. M., at which time defendant appeared by his attorneys aforesaid and the Court entered its order denying defendant's motion to set aside the verdict and quash the indictment, to which order the defendant excepted. Thereupon judgment was duly imposed and there-

after upon motion duly made, bail bond was fixed.

The defendant presents the foregoing as his Proposed Bill of Exceptions in the above entitled and numbered cause and prays that same may be settled and allowed. [26]

Dated this 14th day of August, A. D., 1944.

DOUGHERTY, CHANDLER & CONNOR

By JOHN F. CONNOR
Attorneys for Defendant
516-19 Heard Building
Phoenix, Arizona

It is stipulated that the foregoing Bill of Exceptions is correct and may be settled and allowed by the Court.

Dated this 14 day of August, A. D., 1944.

F. E. FLYNN,
United States Attorney for the District of Arizona

By E. R. THURMAN
Assistant United States Attorney

The foregoing Bill of Exceptions is correct and is hereby settled, allowed and approved, within the period of extended time heretofore granted by Order of Court.

Dated this 15 day of August, A. D., 1944.

ALBERT M. SAMES

United States District Judge, in absence from the District of United States District Judge, Dave W. Ling.

Received copy of Proposed Bill of Exceptions this 14th day of August, A. D., 1944.

E. R. THURMAN

Assistant United States Attorney

[Endorsed]: Filed Aug. 24, 1944. [27]

[Title of District Court and Cause.]

ASSIGNMENTS OF ERROR

Carl B. Williams, the defendant-appellant in the above entitled and numbered Cause, in connection with his Appeal herein, comes now and makes it known that, in the records, proceedings, verdict, judgment, and sentence appealed from, manifest error has intervened to his prejudice, in these particulars, to-wit:

I.

The Court erred in overruling defendant's Motion to Quash the Indictment for the reason that the Indictment was defective in substance and adversely affected defendant's rights to liberty.

II.

The Court erred in its refusal to grant defendant's Motion for Directed Verdict for the reason that there was no competent evidence adduced upon his trial to show the guilt of the defendant.

III.

The Court erred in admitting any evidence relative to the commission of an alleged offense by the defendant for the reason that the act as alleged was not a violation of any criminal statute of the United States, nor of the statute [28] under which he was indicted for the reason that the uncontradicted evidence conclusively shows that the prosecuting witness was over the age of sixteen (16) years, and therefore, capable of consenting to an act of sexual intercourse with a male person upon lands within the exclusive jurisdiction of the United States.

IV.

The Court committed error in refusing to grant defendant's Motion to Set Aside the Verdict for the reason that he was deprived of his liberty without due process of law in that there is no Federal Statute denouncing as a crime an act of sexual intercourse with a female person over the age of sixteen (16) years, without force and with her consent.

V.

The Court erred in holding as a matter of law that the defendant, under the facts and circumstances of the case, was guilty of the crime of rape,

for the reason that no Federal statute defines as a crime the action with which defendant was charged.

DOUGHERTY, CHANDLER & CONNOR

By JOHN F. CONNOR,

Attorneys for Defendant-Appellant

516-519 Heard Building

Phoenix, Arizona

Received copy of the within Assignments of Error this 24 day of August, A. D., 1944.

FRANK E. FLYNN,

United States Attorney

By E. R. THURMAN

Assistant United States Attorney

[Endorsed]: Filed Aug. 24, 1944. [29]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL AND DESIGNATION OF RECORD ON APPEAL

The appellant, Carl B. Williams, adopts the Assignments of Error filed in the District Court, as the points on which he intends to rely in this Appeal, and designates the printing of the transcript of record in accordance with defendant-appellant's Praecipe for Record on Appeal, as prepared and sent up by the Clerk of the District Court.

Dated, at Phoenix, Arizona, this 24th day of August, 1944.

DOUGHERTY, CHANDLER & CONNOR

By JOHN F. CONNOR

Received copy of this document, this 24th day of August, A. D., 1944.

F. E. FLYNN,
United States Attorney

By E. R. THURMAN
Assistant United States Attorney

[Endorsed]: Filed Aug. 24, 1944. [30]

[Title of District Court and Cause.]

PRAECIPE OF DEFENDANT FOR RECORD ON APPEAL

To the Clerk of the District Court of the United States for the District of Arizona:

The defendant-appellant, Carl B. Williams, hereby requests that you make a transcript of the record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to his Appeal taken in the above entitled Cause, and to include in such transcript of record, the following:

1. Indictment.
2. Verdict of Jury.

3. Judgment and Sentence entered June 27, 1944.
4. Notice of Appeal.
5. Bond on Appeal.
6. Bill of Exceptions.
7. Assignment of Errors.
8. The following minute entries:

Minute entry of April 4, 1944, pertaining to the arraignment.

June 21, 1944.

June 22, 1944, denying defendant's motion for order quashing indictment. [31]

June 24, 1944, pertaining to defendant's written motion to set aside verdict and quash indictment.

June 27, 1944, denying defendant's motion to set aside verdict and quash indictment.

July 12, 1944, pertaining to former Counsel's withdrawal and order to substitute Dougherty, Chandler & Connor as Counsel of record.

July 25, 1944, pertaining to extension of time to file Bill of Exceptions.

9. This Praecipe.

Dated, at Phoenix, Arizona, this 24th day of August, 1944.

DOUGHERTY, CHANDLER & CONNOR

By JOHN F. CONNOR

Attorneys for Defendant-Appellant

Received copy of the within Praecipe this 24th day of August, 1944.

F. E. FLYNN,
United States Attorney
By E. R. THURMAN
Assistant United States
Attorney

[Endorsed]: Filed Aug. 24, 1944. [32]

In the United States District Court
for the District of Arizona

CLERK'S CERTIFICATE TO TRANSCRIPT OF RECORD

United States of America,
District of Arizona—ss.

I, Edward W. Scruggs, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the case of United States of America, Plaintiff, versus Carl B. Williams, Defendant, numbered C-6759-Phoenix, on the docket of said Court.

I further certify that the attached pages, numbered 1 to 32, inclusive, contain a full, true and correct transcript of the proceedings of said cause and all the papers filed therein, together with the endorsements of filing thereon, called for and designated in the praecipe filed in said cause and made

a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk, in the City of Phoenix, State and District aforesaid.

I further certify that the Clerk's fee for preparing and certifying to this said transcript of record amounts to the sum of $10.05, and that said sum has been paid to me by counsel for the appellant.

Witness my hand and the seal of the said Court this 1st day of September, 1944.

[Seal] EDWARD W. SCRUGGS,
Clerk.
By CATHERINE A. DOUGHERTY
Chief Deputy Clerk. [33]

[Endorsed]: No. 10825. United States Circuit Court of Appeals for the Ninth Circuit. Carl B. Williams, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Arizona.

Filed September 5, 1944.

PAUL P. O'BRIEN
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 10825

CARL B. WILLIAMS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

ADOPTION OF STATEMENT OF POINTS IN CERTIFIED TRANSCRIPT AS STATEMENT OF POINTS ON APPEAL

To the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit:

The Appellant, Carl B. Williams, hereby adopts the Statement of Points appearing in the transcript of the Record, as the Statement of Points on which Appellant intends to rely on appeal, and said Appellant further designates the printing of the transcript of record in its entirety as certified to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated, at Phoenix, Arizona, this 12th day of September, A. D., 1944.

DOUGHERTY, CHANDLER & CONNOR

By JOHN F. CONNOR

Received copy of this document, this 12th day of September, A. D., 1944.

F. E. FLYNN,
United States Attorney

By .....,
Assistant United States Attorney

[Endorsed]: Filed Sep. 14, 1944. Paul P. O'Brien, Clerk.

No. 10825

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

CARL B. WILLIAMS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Upon Appeal from the District Court of the United States for the District of Arizona

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PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Thursday, February 1, 1945.

Before: Healy and Bone,
Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeal herein argued by Mr. John Francis Connor, counsel for appellant, and by Mr. E. R. Thurman, Assistant United States Attorney, counsel for appellee, and submitted on oral stipulation of said counsel, to Mathews, Healy and Bone, Circuit Judges.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Friday, March 30, 1945.

Before: Mathews, Healy and Bone,
Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT

By direction of the Court, Ordered that the typewritten opinion and dissenting opinion this day rendered by this Court in above cause be forthwith

filed by the clerk and that a judgment be filed and recorded in the minutes of this court in accordance with the majority opinion rendered.

[Title of Circuit Court of Appeals and Cause.]

Appeal from the District Court of the United States for the District of Arizona

Before: Mathews, Healy and Bone, Circuit Judges.

Mathews, Circuit Judge.

OPINION AND DISSENTING OPINION

The questions here presented are (1) whether the indictment under which appellant was convicted and sentenced charges an offense against the United States and (2) whether the evidence supports the conviction.

First. The indictment charges that appellant, on or about December 10, 1943, within the District of Arizona and within and upon the Colorado River Indian Reservation, did "wilfully, unlawfully and feloniously ravish and carnally know Geraldine Rose Ameelyenah, she, the said Geraldine Rose Ameelyenah, being then and there a female person and an Indian under the age of eighteen years, and not being then and there the wife of [appellant]."

On the margin of the indictment this endorsement appears: "Violation: 18 U.S.C. 548 (Rape)." The endorsement indicates that the District Attorney who drew the indictment thought he was charging an offense under § 328 of the Criminal

Code, 18 U.S.C. § 548. This section applies only to offenses committed by Indians. The indictment does not charge that appellant is an Indian.[1] It therefore does not charge an offense under this section. However, as the Supreme Court has said:

"It is wholly immaterial what statute was in the mind of the District Attorney when he drew the indictment, if the charges made are embraced by some statute in force. The endorsement on the margin of the indictment constitutes no part of the indictment and does not add to or weaken the legal force of its averments. We must look to the indictment itself, and if it properly charges an offense under the laws of the United States, that is sufficient to sustain it, although the representative of the United States may have supposed that the offense charged was covered by a different statute."[2]

The United States does not here contend that the indictment charges an offense under § 328 of the Criminal Code, 18 U.S.C.A. § 548, but contends that it charges an offense under § 2145 of the Revised Statutes, 25 U.S.C.A. § 217, and § 289 of the Criminal Code, 18 U.S.C.A. § 468.

Section 2145 of the Revised Statutes, 25 U.S.C.A. § 217, provides that, with inapplicable exceptions, "the general laws of the United States as to the punishment of crimes committed in any place within the sole and exclusive jurisdiction of the

[1] The evidence shows that appellant is a white man.

[2] Williams v. United States, 168 U.S. 382, 389. See, also United States v. Nixon, 235 U.S. 231.

United States * * * shall extend to the Indian country." As used in this section, the term "Indian country" includes Indian reservations.[3]

The general laws of the United States as to the punishment of crimes committed in any place within the sole and exclusive jurisdiction of the United States are found in chapter 11 [(§ 272-289) of the Criminal Code, 18 U.S.C.A. §§ 451-468. Places within the sole and exclusive jurisdiction of the United States are described in § 272 of the Criminal Code, 18 U.S.C.A. § 451. When committed in such places, certain acts are made penal by §§ 273-288 of the Criminal Code, 18 U.S.C.A. §§ 452-467, but the act charged in the indictment in this case is not one of these. Section 289 of the Criminal Code, 18 U.S.C.A. § 468, provides:

"Whoever, within the territorial limits of any State, * * * but within or upon any of the places now existing or hereafter reserved or acquired, described in [§ 272 of the Criminal Code, 18 U.S.C.A. § 451],[4] shall do * * * any act or thing which is not made penal by any laws of Congress, but which if committed * * * within the jurisdiction of the State * * * in which such place is situated, by the laws thereof in force on February 1, 1940, and remaining in force at the time of doing * * * of such act or thing, would be penal, shall be deemed guilty

[3] In re Wilson, 140 U.S. 575; Pickett v. United States, 216 U.S. 456; Donnelly v. United States, 228 U.S. 243; United States v. Ramsey, 271 U.S. 467.

[4] As shown above, these provisions apply, not only to the places described in § 272 of the Criminal Code, 18 U.S.C.A. § 451, but also to Indian reservations.

of a like offense and be subject to like punishment."

The indictment in this case charges an act of carnal knowledge (sexual intercourse) accomplished with a female, not the wife of the perpetrator, under the age of eighteen years. It charges that the act was committed within the territorial limits of the State of Arizona,[5] but within and upon an Indian reservation, on or about December 10, 1943. The act so charged was not made penal by any laws of Congress. If, however, the act had been committed within the jurisdiction of the State of Arizona, it would have been penal by a law of the State (§ 43-901 of the Arizona Code) in force on February 1, 1940, and remaining in force on December 10, 1943. Section 43-901 provides, and did at all pertinent times provide:

"Rape is an act of sexual intercourse accomplished with a female, not the wife of the perpetrator, in any of the following circumstances: Where the female is under the age of eighteen (18) years. * * *. Rape is punishable by imprisonment in the state prison for life or for any term of years not less than five (5)."

Thus the indictment charges an act which, if committed within the jurisdiction of the State, would have constituted an offense against the State —the offense which § 43-901 defines as "rape." It therefore charges a like offense against the United States.

Appellant contends that § 289 of the Criminal

[5] The State of Arizona and the District of Arizona have the same territorial limits. 28 U.S.C.A. § 143.

Code, 18 U.S.C.A. § 468, is inapplicable here and, in support of his contention, cites §§ 278 and 279 of the Criminal Code, 18 U.S.C.A. §§ 457 and 458.

Section 278 of the Criminal Code, 18 U.S.C.A. § 457, provides: "Whoever shall commit the crime of rape shall suffer death." As used in this section, the term "rape" means rape as defined at common law.[6] The indictment in this case does not charge the common-law offense. Instead, it charges a statutory offense like that which § 43-901 of the Arizona Code defines as rape.

Section 279 of the Criminal Code, 18 U.S.C.A. § 458, provides: "Whoever shall carnally and unlawfully know any female under the age of sixteen years * * * shall, for the first offense, be imprisoned not more than fifteen years, and for a subsequent offense, be imprisoned not more than thirty years." This section applies only to acts of unlawful carnal knowledge (sexual intercourse) accomplished with females under the age of sixteen years. The indictment in this case does not charge such an act. Instead, it charges an act of unlawful carnal knowledge accomplished with a female under the age of eighteen years.[7]

We conclude that § 289 of the Criminal Code, 18 U.S.C.A. § 468, is applicable here, and that §§ 278 and 279 of the Criminal Code, 18 U.S.C.A. §§ 457 and 458, are inapplicable.

Second. There is evidence to the following ef-

[6] Oliver v. United States, 9 Cir., 230 F. 971.

[7] The evidence shows that Geraldine Rose Ameelyenah was over the age of sixteen years and under the age of eighteen years.

fect: Appellant is a white man. Geraldine Rose Ameelyenah is a female Indian. On December 3, 1943, appellant had sexual intercourse with Geraldine Rose Ameelyenah at a place within the District of Arizona and within and upon the Colorado River Indian Reservation. At that time, Geraldine Rose Ameelyenah was over the age of sixteen years, was under the age of eighteen years, and was not appellant's wife. The evidence amply supports the conviction.

Judgment affirmed.

Healy, Circuit Judge, dissenting

The act proved here was the having of sexual intercourse with an Indian girl over the age of sixteen, with the girl's consent. By §279 of the Criminal Code, 18 USCA §458, Congress has undertaken to define and punish the crime commonly termed "statutory rape," that is, the act of having carnal knowledge of a female of tender years. It has fixed at sixteen years the age below which consent to the act may not lawfully be given.

The statute exhibits a congressional policy intended to obtain in all places over which the federal jurisdiction extends, regardless of what the local policy may be—whether less or more stringent. Thus if, as in the case in a number of states, the local statute has fixed the age of consent at a less mature age than sixteen, still, as the government admits, the federal statute governs in those localities within the state where the federal jurisdiction obtains. The converse, I think, is equally true. Accordingly, in my opinion, §289 of the Criminal Code, 18 USCA §468, is inapplicable. That statute

was intended to apply only in the case of those offenses concerning which Congress has not itself deemed it politic to legislate.

No crime was charged or proven under the federal statute and I think the judgment of conviction should be reversed.

[Endorsed]: Opinion and Dissenting Opinion. Filed Mar. 30, 1945. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 10825

CARL B. WILLIAMS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

JUDGMENT

Upon Appeal from the District Court of the United States for the District of Arizona.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the District of Arizona and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

[Endorsed]: Filed and entered March 30, 1945. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Monday May 14, 1945.

Before: Mathews, Healy and Bone,
Circuit Judges.

[Title of Cause.]

ORDER DENYING PETITION FOR REHEARING, ETC.

Upon consideration thereof, and by direction of the Court, It Is Ordered that the petition of appellant, filed May 1, 1945, and within time allowed therefor by rule of court, and valid extension thereof, for a rehearing of above cause be, and hereby is denied.

Upon consideration of the motion for stay of mandate in the event such petition for rehearing be denied, It Is Further Ordered that the issuance of the mandate of this Court in above cause be, and hereby is stayed to and including June 16, 1945, and if within said time the appellant shall file with the clerk of the Supreme Court of the United States his petition for a writ of certiorari, then the mandate of this court is to be stayed until after the said Supreme Court passes upon the said petition.

[Title of Circuit Court of Appeals and Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing forty-eight (48) pages numbered from and including 1 to and including 48, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellant, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 24th day of May, 1945.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES.

ORDER ALLOWING CERTIORARI—Filed October 8, 1945

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson and Mr. Justice Burton took no part in the consideration or decision of this application.

No. 1365

JUN 11 1945

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

CARL B. WILLIAMS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent

UPON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

M. J. DOUGHERTY,
516-19 Heard Bldg.,
Phoenix, Arizona
Counsel for Petitioner

JOHN F. CONNOR,
516-19 Heard Bldg.,
Phoenix, Arizona
Of Counsel for Petitioner